REMARKS

Claims 16-30 are presently pending in the application. None of the claims were amended in this response. Favorable reconsideration is respectfully requested.

Claims 16-25 and 27-30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wireless Application Protocol. MMS Encapsulated Protocol, Version 05-Jan-2002 (hereinafter "WAP") in view of Ratschunas et al. (WO 01/28171 A1). Claim 26 was rejected under 35 U.S.C. §103(a) as being unpatentable over WAP in view of Ratschunas et al. (WO 01/28171 A1) and Aho (US Patent Pub. 2001/0010685). Applicant respectfully traverses the above rejections.

Specifically, the cited art, alone or in combination, fails to teach or suggest the features of "providing, upon non-deliverability of the data to the second communications unit, an item of information concerning the non-deliverability of the transmitted data in the transmission status message; and wherein the non-deliverability of the data sent applies if one of the correct receipt of the data sent and a recipient notification message concerning the data to be transmitted to the second communications unit is not acknowledged by the second communications unit via a respectively associated confirmation message" as recited in claim 19, and similarly recited in claim 27. Under the recited configuration, the features address the situation where a MMS message was correctly sent, but not received yet by the receiving device. Typically, under the WAP protocol, information/message regarding the sending of the message is provided for (see "Delivery.ind" and "X.Mms-Status"messages, WAP, section 6.5, page 19 and 7.2.23). The message informs the MMS sender of the status of the message, where the message is created at the network element (M-SR) after receiving acknowledgment from the sender. However, as just explained, the message is not delivered directly from the sender to the receiving unit, but is created at a network element. If the sender of an MMS receives the requested MMS transmission status message relating to a sent message, the sender cannot determine, for example, if the message expired, was not downloaded, or if the receiving unit was not available (see amended specification page 5, lines 1-13).

As has been conceded by the Office, the WAP document does not teach or suggest the aforementioned configuration, and merely describes the status of a message being sent from the sender, discussed above.

Regarding Ratschunas, the document teaches that the transmitter inserts a receiving condition into a message, and the receiver can only receive the message if the receiving condition is met (see Abstract, page 3, lines 6-14). The purpose of this arrangement is to reduce network load by tailoring messages only to recipients that meet a specific condition (e.g., location), where unnecessary messages are not transmitted (page 3, lines 28-34). However, Ratschunas teaches that the "condition" *is one that must be met before the message is even transmitted.* For example, using the location of the device, Ratschunas teaches that the Mobile Location Center (MLC 5) determines the location of the recipient, and if the recipient is not in the intended location, the message is not transmitted (Fig. 2; page 10, line 24 - page 11, line 9). In the alternate embodiment described on page 12, line 22 - page 13, line 11, the message is transmitted to a multimedia service center (MMSC 2), which then determines whether or not the condition is met.

In either case, Ratschunas does not send out a "transmission status message" where an item of information is provided "concerning the non-deliverability of the transmitted data in the transmission status message; wherein the non-deliverability of the data sent applies if one of [1] the correct receipt of the data sent and [2] a recipient notification message concerning the data to be transmitted to the second communications unit is not acknowledged by the second communications unit via a respectively associated confirmation message." As explained above, Ratschunas only checks the condition of the recipient before any message is sent - the "transmission status" is not observed. Also, the second communication unit cannot transmit back a confirmation message, since the message would not have been sent in the first place

Moreover, there is no apparent reason why one skilled in the art would combine the WAP document and the Ratschunas reference in the manner suggested in the Office Action. Under 35 U.S.C. § 103, the factual inquiry into obviousness requires a determination of: (1) the scope and content of the prior art; (2) the differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) secondary consideration (e.g., the problem solved). *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18, 148 USPQ2d 459, 467

(1966). "[A]nalysis [of whether the subject matter of a claim is obvious] need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l Co. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) *quoting In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006); *see also DyStar Textilfarben GmBH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1361, 80 USPQ2d 1641, 1645 (Fed. Cir. 2006)("The motivation need not be found in the references sought to be combined, but may be found in any number of sources, including common knowledge, the prior art as a whole, or the nature of the problem itself."). The analysis supporting obviousness, however, should be made explicit and should "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements" in the manner claimed. *KSR*, 127 S. Ct. at 1732, 82 USPQ2d at 1389.

Appellant respectfully submits that the Office Action has improperly piecemealed individual features from multiple references to arrive at the present rejection. "[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *KSR,* 127 S. Ct. at 1732. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). It is "impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). "One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention" *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). "A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments relying on *ex post* reasoning." *KSR* 127 S. Ct. at 1740.

Regarding WAP, the sending status is already known. For example, in section 7.2.20, the "Response-Status" field is described within the "M-Send.conf" message (see section 6.1.2, page 14). This configuration is acknowledged in FIG. 2 and related text in the present specification (page 13, line 8 - page 14, line 30), which is believed to be consistent with the disclosure in the WAP document. As was explained previously, the "M-Send.req" message provides error and

status information with regard to the sending of the MMS message (see also 7.2.23: "retrieved", "rejected", "deferred", "unrecognized", "expired."). Since the WAP document already provides the statuses of the sent messages, there is no reason to modify the reference in the manner suggested, absent hindsight reconstruction that relied on the Applicant's disclosure. For at least these reasons, Applicant submits the rejection is improper and should be withdrawn.

Based on the foregoing, the Applicant respectfully requests withdrawal of the claim rejections and allowance of the application. If there are any additional fees that are due in connection with this application as a whole, the Examiner is authorized to deduct those fees from Deposit Account No. 02-1818. If such a deduction is made, please indicate Attorney Docket No. 0112740-1015 on the account statement.

Respectfully submitted,

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